

Dept. of Homeland Security, OPM

§ 9701.501

(1) An increase in basic pay under § 9701.324;

(2) A locality or special rate supplement increase under § 9701.336;

(3) A performance pay increase determination under § 9701.342(a);

(4) A within-grade increase determination under 5 CFR 531.404, prior to conversion to the pay system established under subpart C of this part;

(5) A pay determination under any other applicable pay rules;

(6) Awards under any legal authority, including 5 U.S.C. chapter 45, 5 CFR part 451, and a Departmental or organizational awards program;

(7) Eligibility for promotion; or

(8) Such other action that DHS considers appropriate, as specified in the implementing directives.

(c) A rating of record must assess an employee's performance with respect to his or her performance expectations and/or relative contributions and is considered final when issued to the employee with all appropriate reviews and signatures.

(d) DHS may not impose a forced distribution or quota on any rating level or levels.

(e) A rating of record issued under this subpart is an official rating of record for the purpose of any provision of title 5, Code of Federal Regulations, for which an official rating of record is required.

(f) DHS may not lower the rating of record of an employee on an approved absence from work, including the absence of a disabled veteran to seek medical treatment, as provided in Executive Order 5396.

(g) A rating of record may be grieved by a non-bargaining unit employee (or a bargaining unit employee when no negotiated procedure exists) through an administrative grievance procedure established by DHS. A bargaining unit employee may grieve a rating of record through a negotiated grievance procedure, as provided in subpart E of this part. An arbitrator hearing a grievance is subject to the standards of review set forth in § 9701.521(g)(2). Except as otherwise provided by law, an arbitrator may not conduct an independent evaluation of the employee's performance or otherwise substitute his or her judgment for that of the supervisor.

(h) A supervisor or other rating official may prepare an additional performance appraisal for the purposes specified in the applicable performance management system (e.g., transfers and details) at any time after the completion of the minimum period. Such an appraisal is not a rating of record.

(i) DHS implementing directives will establish policies and procedures for crediting performance in a reduction in force, including policies for assigning additional retention credit based on performance. Such policies must comply with 5 U.S.C. chapter 35 and 5 CFR 351.504.

§ 9701.410 DHS responsibilities.

In carrying out its performance management system(s), DHS must—

(a) Transfer ratings between subordinate organizations and to other Federal departments or agencies;

(b) Evaluate its performance management system(s) for effectiveness and compliance with this subpart, DHS implementing directives and policies, and the provisions of 5 U.S.C. chapter 23 that set forth the merit system principles and prohibited personnel practices;

(c) Provide OPM with a copy of the implementing directives, policies, and procedures that implement this subpart; and

(d) Comply with 29 CFR 1614.102(a)(5), which requires agencies to review, evaluate, and control managerial and supervisory performance to ensure enforcement of the policy of equal opportunity.

Subpart E—Labor-Management Relations

EDITORIAL NOTE: At 73 FR 58435, Oct. 7, 2008, the application of subpart E to part 9701 was rescinded.

§ 9701.501 Purpose.

This subpart contains the regulations implementing the provisions of 5 U.S.C. 9701(b) relating to the Department's labor-management relations system. The Department was created in recognition of the paramount interest in safeguarding the American people, without compromising statutorily protected employee rights. For this reason

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Congress stressed that personnel systems established by the Department and OPM must be flexible and contemporary, enabling the Department to rapidly respond to threats to our Nation. The labor-management relations regulations in this subpart are designed to meet these compelling concerns and must be interpreted with the Department's mission foremost in mind. The regulations also recognize the rights of DHS employees to organize and bargain collectively, subject to any exclusion from coverage or limitation on negotiability established by law, including these regulations, applicable Executive orders, and any other legal authority.

§ 9701.502 Rule of construction.

In interpreting this subpart, the rule of construction in § 9701.106(a)(2) must be applied.

§ 9701.503 Waivers.

When a specified category of employees is covered by the labor-management relations system established under this subpart, the provisions of 5 U.S.C. 7101 through 7135 are waived with respect to that category of employees, except as otherwise specified in this part (including § 9701.106).

§ 9701.504 Definitions.

In this subpart:

Authority means the Federal Labor Relations Authority described in 5 U.S.C. 7104(a).

Collective bargaining means the performance of the mutual obligation of a management representative of the Department and an exclusive representative of employees in an appropriate unit in the Department to meet at reasonable times and to consult and bargain in a good faith effort to reach agreement with respect to the conditions of employment affecting such employees and to execute, if requested by either party, a written document incorporating any collective bargaining agreement reached, but the obligation referred to in this paragraph does not compel either party to agree to a proposal or to make a concession.

Collective bargaining agreement means an agreement entered into as a result

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of collective bargaining pursuant to the provisions of this subpart.

Component means any organizational subdivision of the Department.

Conditions of employment means personnel policies, practices, and matters affecting working conditions—whether established by rule, regulation, or otherwise—except that such term does not include policies, practices, and matters relating to—

(1) Political activities prohibited under 5 U.S.C. chapter 73, subchapter III;

(2) The classification of any position, including any classification determinations under subpart B of this part;

(3) The pay of any position, including any determinations regarding pay or adjustments thereto under subpart C of this part; or

(4) Any matters specifically provided for by Federal statute.

Confidential employee means an employee who acts in a confidential capacity with respect to an individual who formulates or effectuates management policies in the field of labor-management relations.

Day means a calendar day.

Dues means dues, fees, and assessments.

Exclusive representative means any labor organization which is recognized as the exclusive representative of employees in an appropriate unit consistent with the Department's organizational structure, pursuant to 5 U.S.C. 7111 or as otherwise provided by § 9701.514.

Grievance means any complaint—

(1) By any employee concerning any matter relating to the conditions of employment of the employee;

(2) By any labor organization concerning any matter relating to the conditions of employment of any employee; or

(3) By any employee, labor organization, or the Department concerning—

(i) The effect or interpretation, or a claim of breach, of a collective bargaining agreement; or

(ii) Any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation issued for the purpose of affecting conditions of employment.